

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ELVIN ANTONIO PAULINO,

Plaintiff,

-against-

9:05-CV-0652
(LEK/DEP)

SUPERINTENDENT COSTELLO,
Mid-State Correctional Facility, *et al.*,

Defendants,

DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on February 23, 2007 by the Honorable David E. Peebles, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3 of the Northern District of New York. Report-Rec. (Dkt. No. 30). After ten days from the service thereof, the Clerk has sent the entire file to the undersigned, including the objections by Defendants, which were filed on February 28, 2007, and the Response by Plaintiff, which was filed on March 7, 2007. Objections (Dkt. No. 31); Response (Dkt. No. 32).

It is the duty of this Court to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b). “A [district] judge... may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.* This Court has considered the objections and has undertaken a de novo review of the record and has determined that the Report-Recommendation should be approved for the reasons stated therein.

Accordingly, it is hereby

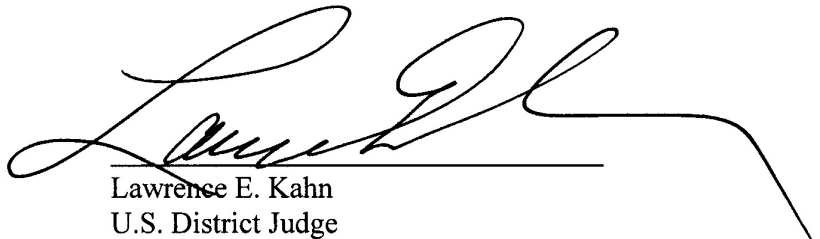
ORDERED, that the Report-Recommendation (Dkt. No. 30) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

ORDERED, that Defendants' motions to dismiss Plaintiff's complaint for failure to state a claim upon which relief may be granted (Dkt. Nos. 22, 26) are **DENIED** in all respects; and it is further

ORDERED, that the Clerk serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: March 30, 2007
Albany, New York



Lawrence E. Kahn
U.S. District Judge